

Attorney for Plaintiffs

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INTRODUCTION

JURISDICTION

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1 to 28 U.S.C. §1334, 28 U.S.C. §157, and 11 U.S.C. §523 since this is a proceeding to determine
2 the value of a particular debt as set forth below.

3 **THE PARTIES**

4 Plaintiff, filed a Voluntary Petition for Relief under Chapter 13 of title 11 of the United States
5 Code in this Court on June 26, 2008.

6 Defendant is a creditor and filed a secured claim (#5) against Plaintiff's real property located
7 in at 1359 Henderson Avenue, Menlo Park, California 94025.

8 **ALLEGED FACTS**

9 1. Plaintiff is an elderly lady, born April 11, 1927, and not knowledgeable about real estate
10 transactions and must rely on friends and family to assist her.

11 2. Defendant was aware of such facts, however, on or about June 9, 2006, loaned Plaintiff a
12 sum in the amount of \$360,000.00, interest only at 12% (payments of \$3600.00 month) with
13 payments commencing on February 1, 2007. Defendant had an option to increase the interest rate
14 to 17% in the event Plaintiff defaulted and the late fee charge was 10%. The entire loan was due
15 and payable on January 1, 2009.

16 3. The terms of the loan were not disclosed to Plaintiff. Plaintiff never received any of the
17 proceeds of the loan. Defendant was aware that Plaintiff never received any of the funds.

18 4. Plaintiff first learned of the terms of the loan after she received a Notice of Trustee sale on
19 or about February 20, 2008.

20 5. In an effort to discover the terms and condition of the loan and to forestall the foreclosure
21 by Defendant, Plaintiff was required to pay \$5,200.00 (an alleged monthly payment) on April 1,
22 2008 and additional payment of \$2,500.00 on May 15, 2008.

23 6. Defendant filed a claim on May 26, 2009 for a secured claim (#5) of \$440,786.00.

24 7. Defendant agreed to withdraw and cancel his secured claim if the District Attorney brought
25 action against the other parties involved in the loan. The District Attorney had not brought any
26 action and therefore on Plaintiff filed an objection to the claim on April 29, 2010, which was
27 amended on May 17, 2010. Defendant did not answer the objection and On June 21, 2010 this
28 court disallowed Defendant's claim in its entirety based on fraud and elderly abuse.

1 FIRST CAUSE OF ACTION

2 Violation of 11 U.S.C. 523 (a)(2)

3 Plaintiffs incorporate alleged facts 1 through 7 as fully set forth herein.

4 In doing the acts herein described, Defendant through false pretenses, false representations,
5 and/or actual fraud acted to induce Plaintiff to enter into an agreement pledging her real property
6 as secured when Plaintiff received no valuable consideration, and in the absence of said false
7 pretense, false representations, and/or actual fraud by Defendant, Plaintiff would not have entered
8 into the agreements and incurred the losses attributable to Defendant. Defendant's conduct
9 violates 11 U.S.C. §523(a)(2).

10 SECOND CAUSE OF ACTION

11 Violation of 11 U.S.C. 523 (a)(4)

12 Plaintiffs incorporate alleged facts 1 through 7 as fully set forth herein.

13 In doing the acts herein described, Defendant through actual fraud and defalcation, acted to induce
14 Plaintiff to enter into invest for valuable consideration, and in the absence of said false pretense,
15 false representations, and/or actual fraud by Defendant, Plaintiff would not have agreed to invest
16 in the companies or purchase stock and Plaintiffs incurred the losses attributable to Defendant.
17 Defendant's conduct violates 11 U.S.C. §523(a)(4).

18 THIRD CAUSE OF ACTION

19 Plaintiffs incorporate alleged facts 1 through 7 as fully set forth herein.

20 In doing the acts herein described, Defendant by deception acted to induce Plaintiff to enter into
21 invest for valuable consideration, in an investment that Plaintiff could not possibly afford or repay
22 due to income and age. Except for the deception of Defendant, Plaintiff would not have agreed to
23 borrow funds which could not be repaid and funds she did not actual receive. This is violation of
24 California Penal Code 368 PC.

25 REQUESTED RELIEF

26 WHEREFORE, Plaintiffs, respectfully request this Court, issue an

27 1. Order that Plaintiff's indebtedness to Defendant is void and the security agreement be declared
28 unsecured and discharged upon Plaintiff's successful completion of her Chapter 13 and discharge.

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2. A recordable order avoiding the lien of Defendant.
3. Grant Plaintiffs such other and further relief to which Plaintiffs may be justly entitled.

Dated: December 20, 2010

/s/ Richard T. Hilovsky
Richard T. Hilovsky, Attorney for Plaintiffs